Quarterly Report

of the

ATTORNEY GENERAL

of

ALABAMA

For the Period

From July 1, 1965

Through September 30, 1965

VOLUME 120

RICHMOND M. FLOWERS, Attorney General

Walker
Printing Co.,
Inc.

QUARTERLY REPORT

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TO THE STATE, COUNTY, AND MUNICIPAL OFFICERS OF ALABAMA:

This Quarterly Report of the Attorney General of Alabama, which includes all official opinions rendered by the Attorney General from July 1, 1965 through September 30, 1965, is published in compliance with the provisions of Title 55, Section 228, Code of Alabama 1940.

Under this section of the Code, I am required to send seven copies of this Quarterly Report to each judge of probate in the State and the judge of probate, in turn, is required to deliver one copy each to the clerk of the circuit court, the sheriff, the tax collector, the tax assessor, the county superintendent of education, and the deputy or county solicitor of his county. This section also requires that I send a copy of this report to each circuit solicitor and the chief executive officer of each incorporated municipality in the State.

The office of the Attorney General is anxious to render prompt and efficient service to the State, county, and municipal officials. If you have any suggestions to make regarding the improvement of the service, I shall be glad to hear from you.

Sincerely,

RICHMOND M. FLOWERS
Attorney General

RICHMOND M. FLOWERS
Attorney General

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Deputy Attorney General

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B. Frank Loeb
James R. Payne
Edward H. Reynolds

OPINIONS

July 2, 1965

Honorable J. Paul Meeks
Judge of Probate
Jefferson County Court House
Birmingham, Alabama

Taxation — Filing Tax — Leases — Assignment of Rents

There is no deed tax or mortgage tax due to be collected upon the assignment by the lessor of rentals under leases to a third party, since such assignment is not a conveyance of real or personal property, or any interest therein, and does not fall within the purview of Sections 618 or 619, as amended, Title 51, Code of Alabama 1940.

Opinion by Assistant Attorney General Loeb.

Dear Mr. Meeks:

Your request for an official opinion dated June 23, 1965, is as follows:

"We have for recording an instrument of assignment from Leased Stations, Inc., to Manufacturers Hanover Trust Company, assigning and transferring 'all of the following lands, monies and rights — —' further enumerated in the instrument, a copy of which is attached hereto, and to certain properties located in Jefferson County, State of Alabama, further described in 'Schedule A.'

"The lease between Leased Stations, Inc., and Texico, Inc., dated December 1, 1962 has been duly recorded, on which the deed tax was duly paid. However, we have no record in Jefferson County that a mortgage to Manufacturers Hanover Trust Company, or any other entity, has been recorded, which would entitle this assignment to exemptions as an assignment for additional security.

"Under many previous opinions of the Attorney General, it has been that transfer or assignment of a lease (other than as additional security for an instrument on which the mortgage tax has been paid) is subject to the deed tax for the then remaining period of the rentals to be collected.

"However, it has been contended that this paid assignment of lease is not subject to such tax.

"Will you kindly give your opinion as to whether or not this assignment is subject to the tax?"

From your request, it appears that there is no mortgage already recorded in Jefferson County or to be recorded in such County to the Manufacturers Hanover Trust Company, and you are therefore correct in assuming that the instrument under consideration here, which is an assignment from Leased Stations, Inc., to Manufacturers Hanover Trust Company, is not in the nature of an additional security mortgage.

You are also correct in stating that there are several official opinions of the Attorney General which hold that when a lease is assigned to a third party, deed tax is due to be collected on the assignment just as if it were an original lease. See Quarterly Report of the Attorney General, Volume 17, page 67, and Biennial Report of the Attorney General, 1934-1936, page 202. However, these opinions are based upon the transfer of the leasehold interest from the lessee to a third party, just as where a deed is executed from "A" to "B" and then from "B" to "C". In such cases, it is entirely proper for deed tax to be collected whenever such leasehold interest is assigned or transferred.

In the case under consideration here, however, the assignment is from the lessor to a third party (Manufacturers Hanover Trust Co., Inc.); and the interest thereby conveyed is the right on the part of Manufacturers Hanover Trust Company to receive and collect the rentals due under the leases. While this right may be, and in this instance is, a very valuable right, still it is not tangible personal or real property. In my opinion, this is not a conveyance of real property, personal property, or any interest in either, such as is contemplated by Section 618, as amended, Title 51, Code of Alabama 1940. The conveyance here is the conveyance of an interest in the nature of a chose in action, an intangible property right, and one which was not intended to be covered by the Legislature in Section 618, supra. Among the annotations contained under Section 618, supra, you will note that the assignment of a vendor's lien is not subject to deed tax, since it does not convey real or personal property but is in the nature of a chose in action. See **State v. Williams,** 214 Ala. 89, 106 So. 500. Further support of this conclusion is found in the opinion contained in Volume 79, page 30, Quarterly Report of the Attorney General, which holds that the recording of an assignment of accounts receivable is not subject to the mortgage filing tax. While it is true that an account receivable is not the same as a right to receive rentals, yet the two are closely analogous and to my way of thinking, they must be treated similarly.

This conclusion has also been reached under an almost identical fact situation in an informal opinion of this office rendered to the Honorable Ashford Todd, Judge of Probate, Huntsville, Alabama, on March 16, 1964.

In conclusion then, it is my opinion that the assignment of rents from Leased Stations, Inc., to Manufacturers Hanover Trust Company is not subject to either deed tax or mortgage tax.

Yours very truly,

RICHMOND M. FLOWERS
Attorney General

July 14, 1965

Honorable M. C. Freeman
Judge of Probate, Limestone County
Athens, Alabama

Judges of Probate — Costs and Fees — Counties

1. Judges of probate are allowed a fee of $1.50 for "celebrating rites of matrimony," which is specifically set forth in the schedule of fees for judges of probate under Title 11, Section 29, Code of Alabama 1940, Recompiled 1958, rather than the $2.00 provided in Title 34, Section 18, of said Code, applicable to such service by any judge, justice of peace, or licensed minister of the gospel.

2. This fee is received by judges of probate for official duties performed and is not a personal fee. A judge of probate on a salary basis, who is required to pay into the county treasury all fees authorized to be collected by him, is responsible for the collection of the $1.50 fee and for covering the same into the county treasury.

Opinion by Assistant Attorney General Screws.

Dear Sir:

Your request for an official opinion bearing date of July 3, 1965, is as follows:

"I shall appreciate it if you will give me your official opinion regarding the following matter:

" 'I desire the official opinion of your office as to whether or not the $2.00 fee provided for in Title 34, Section 18, Code of Alabama, as Recompiled in 1958, for performing a marriage ceremony should

be construed as a fee to be paid to the County Treasury, inasmuch as the Judge of Probate in Limestone County, Alabama is on a salary basis, or, whether such fee accrues to the Judge of Probate of Limestone County, Alabama personally.' "

I wish to take this opportunity to reiterate and reconfirm former opinions of this office holding that the fee allowable to a judge of probate for "celebrating the rites of matrimony" is $1.50, which is specifically set forth in the schedule of fees for the judges of probate under Title 11, Section 29, Code of Alabama 1940, Recompiled 1958, rather than the $2.00 provided for in Title 34, Section 18, Code of Alabama 1940, Recompiled 1958, applicable to such services by any judge, justice of peace, or licensed minister of the gospel.—Quarterly Report of Attorney General, Volume 23, page 187; Quarterly Report of Attorney General, Volume 26, page 113. This ruling is based upon the theory that the specific provisions of law, relating specifically to the fee of judges of probate for "celebrating rites of matrimony," would prevail over the general provisions for the charge for "celebrating rites of matrimony" which are applicable to any judge, justice of peace, or licensed minister of the gospel.

The fees received by judges of probate under Title 11, Section 29, supra, are for official duties performed and are part of the compensation of the office, and are not personal fees.—Quarterly Report of Attorney General, Volume 6, page 140. Judges of probate on a salary basis, who are required to pay into the county treasury all fees authorized to be collected by them are responsible for the collection of a $1.50 fee for "celebrating rites of matrimony" under Title 11, Section 29, supra, and for covering the same into the county treasury.—Quarterly Report of Attorney General, Volume 47, page 162.

In view of the foregoing, it follows that the fee, which should be collected by you for "celebrating rites of matrimony," as Probate Judge of Limestone County, Alabama, is $1.50 as provided for in Title 11, Section 29, supra (and not the $2.00 provided for in Title 34, Section 18, supra). This fee is a part of the official compensation of your office and should be paid by you into the county treasury.

Yours very truly,

RICHMOND M. FLOWERS
Attorney General

July 26, 1965

Hon. Phillip J. Hamm
Commissioner of Revenue
202 Administrative Building
Montgomery, Alabama

Licenses — House Trailers

So-called camp trailers which are collapsible, and which are nothing more than a small compact trailer when they are drawn or pulled by another vehicle (usually by an automobile or small truck), but which can be converted into temporary living quarters when extended or unfolded, are not "house trailers" within the meaning of Act No. 44, Special Session 1961 (Section 704(1), et seq., Pocket Part, Title 51, Code of Alabama 1940, Recompiled 1958), as amended by Act No. 159 of the 1962 Special Session, nor are they subject to the license levied thereunder.

Opinion by Assistant Attorney General Burton.

Dear Sir:

Your request for an official opinion bearing date of June 30, 1965, is as follows:

"In recent years, many new types of small camping trailers have been developed for use by individuals, usually in combination with passenger cars. These trailers are usually folding-type trailers which when opened, convert into a tent-on-wheels and are used almost exclusively for vacation or weekend camping purposes. They may contain special mattresses for sleeping and various types of small camp stoves, ice boxes or refrigerators, at the owner's option. This latter equipment is usually of a portable rather than a built-in nature.

"There is some divergence of opinion as to whether such camping trailers should be licensed as house trailers under the provisions of Title 51, Section 704(1) or whether they are exempt from license under Title 51, Section 703, which reads in part as follows: " 'Small trailers attached to passenger cars, which are used for transporting of less than fifteen hundred pounds are exempt from any license.'

"The provision quoted above would seem to exempt most such utility or camper type trailers (when attached to passenger cars),

unless it is held that such contrivances are house trailers as contemplated by the legislature in enacting what is now Title 51, Section 704(1) et seq.

"We will appreciate your giving us your official opinion as to whether such trailers are exempt, if meeting the requirements of Section 703, Title 51, or in the alternative, if such trailers are 'house trailers' subject to license under Section 704(1), Title 51."

In addition to the description contained in your request, you have also furnished me with several brochures distributed by the manufacturers of various types of these trailers and which illustrate them in a very graphic way. When collapsed or "folded," which is their normal condition when not being used for temporary living quarters or camping purposes, they consist of a super structure similar to a wagon body which is mounted on a chassis and wheels and can be drawn by a small truck or automobile. Some of the tops of the super structure are made of a hard substance while others are made of canvas. When extended by the use of a crank or by otherwise being unfolded, they are converted into a type of living quarters for camping or other temporary purposes. The sides or extended parts are made of canvas, with top of the super structure being used as the roof. Several types resemble a tent when set up. Some of these trailers are more elaborate than others, and are more extensively equipped.

A good illustration of one of the more expensive types of so-called camp trailers is that given by the manufacturer of the "Dee Luxe Gypsy Wagon." Quoting from the brochure this trailer is described as follows:

"A COMFORTABLE, WEATHER-TIGHT INSECT-PROOF CAMP TRAILER THAT SLEEPS 5 ADULTS.

"A few turns of the crank raises to 6'4" inside headroom.

"Upper bunks fold down to provide back-rests for lower bunk-seats. Center table is lowered to provide third lower bunk in aisle space. At the front of the trailer there is a 74" x 16" cabinet top with built-in sink and faucet, and insulated ice refrigerator, with storage drawers below. There is also storage space beneath the lower bunks."

When collapsed and in compact form this particular trailer is forty-eight inches high, some are even lower. It is said to weigh approximately one thousand pounds, some weigh more and some less.

Act No. 44, Special Session 1961 (Section 704(1), et seq., Pocket Part, Title 51, Code of Alabama 1940, Recompiled 1958), as amended by Act No. 159 of the 1962 Session, levies a license on "house trailers," except those which are a part of the stock of a dealer or those which have been assessed for ad valorem taxes as a part of the realty on

which they are situated. Your question then is whether the collapsible so-called camp trailers which have been hereinabove described in some detail are "house trailers," within the meaning of Act No. 44, as amended, supra?

From the above descriptions these so-called camp trailers differ from what is normally thought to be a house trailer, which is actually a kind of house and permanent type structure built on the chassis of the trailer which is suitable at all times for living quarters like a house, except for being designed to be mounted on wheels and to be moved on the highways by being pulled by another vehicle. Words and Phrases, Permanent Edition, Volume 19, Pocket Part, page 214.

The most common position of the so-called camp trailer is that of a small compact trailer, and it is so drawn when transported over the highways by being pulled by an automobile or small truck. It is only used as living quarters during the time that it is unfolded or set up as such. The term "house" and "house trailer" as they are defined in Words and Phrases, Permanent Edition, Volume 19, (see also the Pocket Part), appear to suggest more of a house and permanent type of structure. This also seems to have been the intent of the Legislature in using the term of "house trailer" in Act No. 44, as amended, supra, as one of the notable exceptions or exemptions from the license levied thereby is expressly applicable to those "house trailers" which have been assessed as a part of the realty, and obviously have become a part thereof. This certainly contemplates a much more permanent type of structure than these collapsible type camp trailers which are in most cases not suitable to become a part of the realty or of losing their identity as a small trailer.

In my opinion these collapsible so-called camp trailers are not "house trailers" such as are contemplated under Act No. 44, as amended, supra, nor are they subject to the license levied thereunder.

It is also my further opinion that such trailers not being "house trailers," would fall within the category of small trailers and semi-trailers which are licensed under Title 51, Section 703, Code of Alabama 1940, Recompiled 1958, unless they can qualify for the exemption contained in Section 703 which is quoted in your request.

This exemption requires that the small trailer haul less than fifteen hundred pounds and be attached to and pulled only by passenger cars during the entire license year involved in order to be eligible therefor. This would be a matter to be resolved from the facts in each individual case.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

July 27, 1965

Honorable Ira H. Weissinger
Judge of Probate
Lee County Court House
Opelika, Alabama

Licenses — Trading Stamps.

1. Company engaged in selling trading stamps to local merchants which redeems some of the stamps with premiums kept on hand at the stores belonging to the merchants is maintaining in such stores a redemption center or place of business such as is contemplated in Title 51, Section 606, as amended, Code of Alabama 1940, Recompiled 1958, and is subject to the license levied thereunder as to each store in which the stamps are so redeemed, regardless of whether or not the stores are located in the same county.

Opinion by Assistant Attorney General Burton.

Dear Sir:

Your request for an official opinion bearing date of June 23, 1965, is as follows:

"This is to respectfully request of your office an opinion and interpretation of a statute as applied to the following stated facts.

"STATUTE INVOLVED: Title 51, Section 606, 1940 Code of Alabama, as amended.

"STATED FACTS: A legal entity issues its or their 'trade stamps' to several merchants, all doing business within the State of Alabama, for a stated consideration. In turn, the merchants use said stamps to induce trade by giving the stamps away to customers as they purchase merchandise. The recipient of the stamps (the customer) can then exchange the said 'trade stamps' with any of the several merchants issuing such stamps for stocked or catalogued merchandise.

"In other words, each store would be a 'redemption store' for its own stamps as well as those stamps issued by other stores but none of the redemption stores would be owned, leased or controlled by the person, company or firm issuing the stamps.

"QUESTION: Would such stores be required under Title 51, Section 606 of 1940 Code of Alabama, as amended, or other applicable laws, to pay to the State of Alabama a privilege or license tax?"

Additional information secured from you is to the effect that the premiums or stock used to redeem the stamps, where the redemption of the stamps are made from premiums kept on hand at the local stores, belong to the stamp company issuing and selling the books of trading stamps to the merchants.

Title 51, Section 606, as amended, Code of Alabama 1940, Recompiled 1958, in levying the so-called trading stamp license tax, does so in material part, as follows:

> "Trading stamps.—Every person who engages in or carries on the business of issuing or selling to merchants, trading stamps, or any device or substitute therefor, or any stamps or certificates of like character which are to be given by merchants to purchasers of goods, wares or merchandise and which said stamps, certificates or devices, or substitute therefor, the person issuing or selling the same agrees to accept in payment for goods, wares, **and merchandise kept on hand by himself or another for redemption or for distribution by the person issuing or selling such stamps or certificates,** shall pay to the state of Alabama a privilege or license tax of one thousand dollars per annum." (Emphasis supplied.)

Title 51, Section 831(a), as amended, Code of Alabama 1940, Recompiled 1958, also pertinent to your inquiry provides:

> "Whenever a license is levied in this title, there shall be collected both a state and county license for each place of business, except as specifically otherwise provided."

In construing subsection (a) of Section 831, as amended, supra, together with Section 606, as amended, supra, in the case of **Metcalf v. Sperry & Hutchinson Company,** 268 Ala. 623, 108 So. 2d 831, the Supreme Court of Alabama held that a separate state and county license was due for each redemption center or place of business maintained in this State by a company or person selling or issuing trading stamps to merchants in Alabama.

The facts in the situations described by you in your request and in the additional information furnished are practically the same as those which were involved in the recent case of **Family Discount Stamp Company of Georgia, etc. v. State of Alabama,** 274 Ala. 314, 148 So. 2d 611.

In that case the stamp company kept some premiums on display in two local grocery stores, one located at Guntersville, and the other at Albertville, and both in Marshall County. From time to time redemptions were made by the use of some of the premiums kept on display in said local stores, which was done by the storekeepers' em-

ployees giving the display premiums in exchange for the required number of stamps. The agent of the stamp company then on his next trip would pick up the stamps used to redeem the premiums, and would in most instances replace the premiums taken from the display. And while the evidence showed that several redemptions were effected at each of the local stores in this manner, the general practice was for the customer and stampholder to redeem his stamps through the use of a catalogue and by making application to the stamp company.

The Alabama Supreme Court under the circumstances made the following determination:

"The question is not whether the displaying of premiums, in and of itself, was a local business activity, **but whether the redemption of premiums from such displays, in the manner disclosed by the evidence, constituted such activity.** Our view is that the conclusions of the trial court that redemptions were made at the two stores finds support in the evidence; **that such redemptions constituted the doing of a local business in Marshall County, in this State; and that the trial court correctly held the Stamp Company liable for the license tax prescribed by § 606, Tit. 51, as amended, supra.** Although the Stamp Company contends that if any such redemptions were made, they were made without its knowledge or consent, there is evidence of redemptions being effectuated by employees of the stores; that such employees thereafter delivered to the Stamp Company's salesman, in Marshall County, the stamps received in making such redemptions; and that the Stamp Company's salesman then replaced the redeemed premiums. It seems to us that redemptions made in this manner were as effectively consummated in Marshall County as if they had been made at a so-called 'redemption center' maintained by the Stamp Company in said County." (Emphasis supplied.) **Family Discount Stamp Company, etc. v. State of Alabama,** supra, 148 So. 2d at pages 612 and 613.

The Court then concluded:

"This brings us to the question whether the Stamp Company is liable for a separate license for each of the two places in Marshall County, under the provisions of Code 1940, Tit. 51, Section 831(a), as amended, supra,...

"In our view, the trial court correctly held that a license is due for each place where the Stamp Company maintained a display of premiums from which redemptions were made in the manner disclosed by the evidence. Although the two places were not stocked with all premiums available, they were nonetheless places where redemptions were made and, under the evidence, constituted fixed and established places of business maintained by the Stamp Company..." **Family Discount Company, etc. v. State of Alabama,**

supra, 148 So. 2d at page 613. See also **Metcalf v. Sperry & Hutchinson Company,** 268 Ala. 623, 108 So. 2d 831.

The foregoing being considered, your question is answered to the effect that the Stamp Company would be liable for the license under Section 606, as amended, supra, for each place or store in this State where it maintains a supply of premiums from which redemptions of the trading stamps are made under the circumstances as have been enumerated by you, and not the merchants or the stores.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

August 5, 1965

Honorable O. H. Florence
Register
Circuit Court
Tenth Judicial Circuit of Alabama
Birmingham, Alabama

Commissions — Costs and Fees — Registers — Sales — Opinions Overruled, Modified or Distinguished.

1. In equity cases involving partition and sale of mortgaged realty, the register is entitled to a commission on the sale of the equity value of the legal title only when the mortgagee is not joined or made a party and does not participate in the proceeds so that his interest is not disposed of.

2. Biennial Report of Attorney General, 1930-1932, page 878, overruled.

Opinion by Assistant Attorney General Webb.

Dear Mr. Florence:

I have received your letter of June 9, 1965 in which you request my opinion as follows:

"An opinion is requested concerning a suit in Equity by Kirby G. Reynolds for sale in division of a home against his former wife.

"In the case, the Court held that the complainant, Kirby G. Reynolds, was entitled to an equitable lien, in the amount of $1,550.00, for advancements which he had made from his own personal funds for the payment of the mortgage indebtedness and other indebtedness against the property. The property was sold at public sale under an order of the Court by the undersigned as Register. The highest bid received at the sale was the sum of $1,550.00. This bid was made by Kirby G. Reynolds, the complainant. The property was encumbered by a mortgage in the approximate amount of $10,800.00. Both the complainant and respondent were liable on this mortgage indebtedness in that both of them had executed the mortgage note.

"The complainant purchased the property at the public sale with the understanding that he was taking the property subject to the existing mortgage and also subject to ad valorem taxes and municipal improvement assessments, if any. There were no municipal assessments against the property and the purchaser was already liable personally, together with his wife, for the mortgage indebtedness.

"My question is whether or not the Court costs should be figured on the basis of the sales price of $1,550.00 or upon the unpaid balance on the mortgage plus the $1,550.00. I am familiar with the Attorney General's opinion, 1934 to 1936, page 86, but I have some doubt as to whether this particular question falls within this opinion."

By separate correspondence of June 16, 1965, you forwarded certified copies of the final decree and the amended decree in the case referred to in your letter. In the final decree, the property was sold and conveyed by the register to the said Kirby G. Reynolds with the said Kirby G. Reynolds assuming the unpaid balance due on the mortgage against the property. On the amended decree, the land was sold and conveyed by the register to the said Kirby G. Reynolds, subject to the mortgage on the said property.

In the opinion mentioned by you, Biennial Report of Attorney General, 1934-1936, page 85, the court in equity had ordered a sale to satisfy a lien. This office held that the amount of the consideration paid for the purchase of property is not merely the cash paid but the assuming of the indebtedness thereon, the assumption of the indebtedness being as much a part of the consideration paid for the purchase price of property as the actual cash payments. This opinion is in line with other opinions of this office dealing with mortgage foreclosures and lien sales. See, for example, Quarterly Reports of Attorney General, Volume 27, page 58, and Volume 57, page 82. In Quarterly Report of Attorney General, Volume 57, supra, this office rendered an opinion on

a situation involving a division and sale by an equity court in which the purchaser of the property as a party to the suit already owned a nine-tenth undivided interest in the property. This office, following the ruling in Quarterly Report of Attorney General, Volume 27, supra, held that the register's commission would be based on the sale of the entire property, including the nine-tenth interest already owned by the purchaser. You will note that in both situations treated in these prior opinions, the sale of the entire property is affected and the purchaser is one who already owns an interest in the property and merely purchases the interest of the other co-tenant or, in the case of a mortgage, the interest of the mortgagor.

In the case under consideration, however, the only interest that is being sold is the equity of the two mortgagors who are seeking a partition and sale. The interest of the mortgagee in this case is not to be affected in any way and, in fact, by the rulings of the Supreme Court of Alabama, the court may not dispose of a mortgagee's interest without his consent or without bringing him in as a party and pay off his mortgage from the proceeds of the sale. In this regard, note **Wood v. Barnett,** 208 Ala. 295, 94 So. 338, and **Edmondson v. Martin,** 256 Ala. 73, 53 So. 2d 613. As a general rule of law, a mortgagee in a partition case should not be compelled to pay any of the costs of the partition proceedings between other parties unless he, by his own action, is joined or increases the costs. See Corpus Juris Secundum, Volume 68, Section 241(b), page 369.

The sale, thus involved in this case, is that of the actual interest of the parties which constitutes nothing more than an equity value of the legal title in the property. I am, therefore, of the opinion that the commission of the register is due on the value of the interest sold in cases involving partition of realty and that a mortgagee's interest should not be subject to commission unless he participates in the partition so that his interest is disposed of thereby. Accordingly, I am overruling that opinion of the Attorney General reported in Biennial Report of Attorney General, 1930-1932, page 878, in which this office ruled on the same situation contrary to this opinion.

I have noted that the amended decree in this case changed the purchase from one assuming the mortgage to one subject to the mortgage. Although there is a distinct difference in law between an assumption of a mortgage and a purchase subject to a mortgage, such, in my opinion, would make no difference insofar as the commission of the register is concerned under the circumstances.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

August 18, 1965

Honorable W. Cecil Johnson
Judge of Probate
Clarke County
Grove Hill, Alabama

Counties — Expenses — Constitutionality — Clarke County

1. Act No. 120 (H. 466), approved July 7, 1965, authorizing a flat maximum expense allowance per month for members of the county governing body of Clarke County as reimbursement for expenses incurred in the performance of official duties, and providing for use by them of county equipment for road and bridge work, does not come within the inhibition of Section 68, Section 281 or Amendment XCII (92), of the Constitution of 1901, as the provisions thereof do not constitute an increase in the compensation of said office during the term for which they are appointed or elected if the amount allowable bears a reasonable and substantially accurate relationship to the actual expenses incurred.

2. Such expense allowance is payable from either the general fund or the gasoline tax fund of Clarke County, and may be paid without presentation of itemized expense accounts. That amount paid out of the gasoline tax fund is limited to that proportionate part of the expenses incurred by said members in the performance of their road and bridge duties.

Opinion by Assistant Attorney General Screws.

Dear Sir:

Your request for an official opinion bearing date of August 10, 1965, is as follows:

"I hereby request your official opinion covering the following problem:

"The county governing body of Clarke County is the Court of County Commissioners. Prior to July 7, 1965, the members of the Court were paid a salary of $3900.00 per annum under the provisions of Act No. 340 approved August 7, 1961. Prior to the effective date of that act, the members of the Court had been paid an annual salary of $3,000.00 under the provisions of Act No. 819 approved September 11, 1951.

"On July 7, 1965, House Bill No. 466 was approved, and I think has become Act No. 120 of the current session of the Legislature. At the next regular meeting of the Court of County Commissioners following the approval of this Act No. 120 (H-466), the Court adopted a resolution allowing to each member of the county governing body an expense allowance of $175.00 per month under the provisions of Section 3 of said Act No. 120, and directed that the same be paid out of the Gasoline Tax Fund of the County. Observe that this Act No. 120 supercedes Act No. 340 approved August 7, 1961, and amends Act No. 819 approved September 11, 1951; note also that Section 2 of the 1951 Act is amended to permit each member of the Court to use any available county pickup truck for the express purpose of superintending the construction and maintenance of all public roads and bridges in his district, which truck may be furnished and operated at county expense.

"My questions are:

"1(a) Can the County validly pay to each member of the Court of County Commissioners $175.00 per month out of the Gasoline Tax Fund of the County without presentation of itemized expense accounts?

" (b) If such payment out of the Gasoline Tax Fund is not permissible, could such payments be made out of the General Fund of the county following appropriate modification of the resolution authorizing such payments?

"2. Is it permissible for the members of the county governing body to use any available county pickup truck, to be furnished and operated at county expense, for the express purpose of superintending the construction and maintenance of all public roads and bridges in his district?

"I shall appreciate a prompt response to this inquiry so that I may issue appropriate vouchers to the members of the Court if it is permissible that I do so."

I am of the opinion that your inquiry 1(a) should be answered in the affirmative, subject to the limitations hereinafter set out.

Act No. 120 (H. 466), approved July 7, 1965, provides in pertinent part as follows:

"Section 1. Sections 2 and 3 of Act No. 819, H. 406, approved September 11, 1951 (Acts 1951, V. II. p. 1452), an Act relating to the County Governing Body of Clarke County, are amended to read as follows:

" 'Section 2. For the performance of all other duties now imposed upon them by law and the performance of the extra, new, and additional duties hereby imposed upon them, the members of the County Governing Body of Clarke County shall each receive an annual salary of $3900, payable in equal monthly installments out of the general fund of the county. For the express purpose of superintending the construction and maintenance of all public roads and bridges in his district, as prescribed in Section 1(b) of this Act, any member of such County Governing Body shall be allowed the use of any available county pick-up truck, which may be furnished and operated at county expense.

" 'Section 3. Each member of the County Governing Body of Clarke County shall be allowed an expense allowance not to exceed $175 per month as reimbursement for expenses incurred in the performance of his duty as a member of such Governing Body. The amount of such allowance shall be fixed by resolution of the Governing Body and shall be paid out of the general fund or the Gasoline Tax Fund of the county.' "

As there is no increase in the specified salary of the members of the County Governing Body of Clarke County under Act No. 120, supra, the question of increasing such salary of said members during the term for which they are appointed or elected in violation of Sections 68, Section 281, or Amendment XCII (92) of the Constitution of 1901 does not arise. If there were an increase in such salary, it could not take effect until the next term of office of said commissioners. — Quarterly Report of Attorney General, Volume 117, page 49.

The real question presented by your inquiry is whether the proviso in Act No. 120 (amending Section 3 of the 1951 Act), supra, pertaining to a flat expense allowance not to exceed $175.00 per month as reimbursement for expenses would, in fact, amount to an increase in the compensation of such members during their term of office in violation of the above constitutional provisions.

" This office has heretofore ruled that a flat expense allowance, if based on a reimbursement to the officer concerned for expenses incurred by him in the performance of his official duties and bearing a reasonable and substantially accurate relationship to the actual expenses incurred, is not considered as an increase in compensation and may be given to said officer during his term. — Quarterly Report of Attorney General, Volume 113, page 27; Volume 81, page 43; Letter to Honorable Sim L. Howell, Chairman, Board of Revenue and Control, Morgan County, Alabama, dated October 13, 1955. "

A specific answer to part of your inquiry 1(a), therefore, is dependent upon whether the expense allowance allowed by the county

governing body is based on a reimbursement to the officer concerned, and bearing a reasonable and substantially accurate relationship to the expenses actually incurred. — Letter to Honorable J. O. English, Judge of Probate and Chairman of the Commissioners Court of Coffee County, dated November 15, 1961.

That part of your inquiry 1(a) concerning the presentation of itemized expense accounts, is answered in the affirmative. However, the County Governing Body should have before it concrete evidence as to the relationship between the amount of the expense allowance allowed and the actual expenses incurred. — Letter to Honorable Lewey Stephens, Jr., County Attorney for Coffee County, Elba, Alabama, dated March 20, 1963.

In regard to that portion of your inquiry 1(a) relative to the payment of said expense allowance out of the county gasoline fund, your attention is invited to amended Section 3 of the 1951 Act, supra, providing that the amount of such allowance shall be paid out of the general fund or the gasoline tax fund of the county. However, that amount paid out of the gasoline tax fund should be limited to that proportionate part of the expenses incurred by said members in performance of their road and bridge duties. In other words, this amount should have a reasonable relation to the time spent by the members in performing such road and bridge duties as against the time spent in performing other duties. — Quarterly Report of Attorney General, Volume 73, page 47; Volume 87, page 12; Amendment XCIII (93), Constitution of Alabama 1901. Cf. Quarterly Report of Attorney General, Volume 117, page 49, supra. All or any part of said expense allowance may be paid out of the general fund of the county.

The foregoing paragraph is applicable to and answers your inquiry 1(b), subject to the limitations above set forth.

In my opinion, the answer to your inquiry 2 is answered in the affirmative for the same reasons as set forth in the answer to your inquiry 1(a) and subject to the same limitations thereof.

Yours very truly,

RICHMOND M. FLOWERS
Attorney General

September 8, 1965

Honorable J. P. Faulk, Jr.
Judge of Probate and
Chairman of the Court of County Commissioners
Geneva County
Geneva, Alabama

Counties — Officers and Offices — County Superintendents of Education — Telephones

1. Under the authority of Title 12, Section 12, Subsection 15, Code of Alabama 1940, Recompiled 1958, the county governing body is required to furnish necessary telephones, extensions and like telephone services to the officers named therein; and Title 12, Section 13 of such Code authorizes the county governing body, in its discretion, to provide similar service for the other offices located in the courthouse.

2. The county governing body is also required to furnish such necessary telephone services to the county treasurer or custodian under Title 12, Section 123, Code of Alabama 1940, Recompiled 1958, and to the county superintendent of education under Title 52, Section 130, Code of Alabama 1940, Recompiled 1958.

3. Under the provisions of Title 12, Section 123, Code of Alabama 1940, Recompiled 1958, the county governing body is invested with quasi judicial power in passing upon whether or not the expenditures made, which are authorized thereunder, are reasonable and necessary. If so, it is their duty to approve the same; and if, in its opinion they are not, such payments should not be approved. The "stationery" as used in said section includes typewriters.

Opinion by Assistant Attorney General Screws.

Dear Sir:

Your request for an official opinion bearing date September 1, 1965, is as follows:

"I request your official opinion in answer to the questions as hereinafter set forth.

"Section 12 of Title 12 of the Code of Alabama, 1940, as amended and revised, provides as follows, among other things:

" 'The court has authority: 15, to procure and provide telephones for the offices of the circuit judge, the clerk and register of the circuit court, the offices of the sheriff and jailer, tax assessor and tax collector, and the judge of probate, in their respective counties, and to pay for the same out of the general funds of the county; and said court of county commissioners or boards of revenue, or like body may, in like manner and for the same officer, establish telephones in both court houses where the said officer maintains two offices in the county; and must install such telephone upon the request of the officer entitled thereto.'

"Section 13 of Title 12 of the Code of Alabama, 1940, as amended and revised, provides as follows:

" 'Boards of revenue or courts of county commissioners may designate which offices in the court house may have telephones installed therein.'

"Section 123 of Title 12, Code of Alabama, 1940, as amended and revised, provides as follows:

" 'The judge of probate, tax assessor, tax collector, register of the circuit court in equity, clerk of the circuit court, sheriff and county treasurer or custodian must be allowed reasonable expenses, for suitable books, stationery, postage stamps used exclusively for official business, and telephones to be paid for by the county, on the approval of the court of county commissioners, board of revenue or other like governing body, and the judge of probate shall also be allowed expenses for his seal of office, to be paid for by the county.'

"Section 130 of Title 52 of the Code of Alabama, 1940, as amended and revised, provides, among other things, as follows:

" '—The county board of revenue or court of county commissioners shall provide the county superintendent of education and his professional and clerical assistants with ample, convenient and comfortable office quarters. The county board of revenue or court of county commissioners shall also provide necessary furniture, office equipment, stationery, postage, forms, and supplies, required by the county superintendent of education and his assistants.'

"In order that a proper budget might be prepared for Geneva County, Alabama, for the year 1965-1966, your official opinion is requested in answer to the following questions:

"1. Is it mandantory for the court of county commissioners of Geneva County to procure and provide telephones for the offices

of any officer of Geneva County, other than the circuit judge, the clerk and register of the circuit court, the sheriff, jailer, tax assessor, tax collector, and the judge of probate?

"2. Does the court of county commissioners have the authority to determine the necessity for furniture, office equipment, stationery, forms and supplies required by the county superintendent of education and his assistants and do typewriters constitute necessary office equipment in said office?

"3. Is it necessary that the court of county commissioners provide the county superintendent of education with telephone service?

"4. Does the court of county commissioners have the authority to disallow the payment for expenses for suitable books, stationery, postage stamps and telephones for those offices provided under Section 123 of Title 12 of the Code of Alabama, 1940, as amended and revised, in the event they determine said expenses to be unreasonable?

"Please let me have this opinion at your earliest convenience in order that the same might be available in the preparation of the budget for Geneva County for the forthcoming year."

In answer to your first inquiry, your attention is invited to an opinion of this office reported in Quarterly Report of Attorney General, Volume 102, page 24, wherein it was held that under the authority of Title 12, Section 12, Subsection 15, Code of Alabama 1940, Recompiled 1958, the county governing body is required to furnish necessary telephones, extensions and like telephone services to the officers named therein, and Title 12, Section 13 of such Code authorizes the county governing body in its discretion, to provide similar service for the other offices located in the courthouse. That opinion did not take into consideration Title 12, Section 123, Code of Alabama 1940, Recompiled 1958, supra, which named most of the officers enumerated in Section 12, supra, and in addition named the county treasurer or custodian. In my judgment the county treasurer or custodian must also be furnished a telephone in addition to those officers named in Section 12, supra.

Your second and fourth inquiries relate to the same matters. In my judgment both of these inquiries in general should be answered in the affirmative.—Biennial Report of Attorney General 1930-32, page 780. Said opinion deals at length with the matters presented by you. It was held that under the forerunner of Title 12, Section 123, Code of Alabama 1940, Recompiled 1958, supra, the county governing body is invested with quasi judicial power in passing upon whether or not the expenditures made, which are authorized thereunder, are reasonable and necessary. It further held that although the county governing body

was not the purchasing agent for the purchase of such suitable books, stationery or postage, yet the power of approval was invested in such governing body. It was the duty of such governing body to approve an account made for these supplies used for official business, where they were necessary for the proper conduct of the office and the price to be paid was reasonable, and the refusal to approve the payment of such an account would be an abuse of discretion. On the other hand, if in its opinion, there was more purchased than was reasonably necessary, or a more expensive grade than was reasonable, or the price agreed to be paid was not reasonable, then it becomes the duty of the governing body not to approve the payment.

In regard to the latter part of your second inquiry, it has been held that the typewriter is considered to be within the term "stationery," as the same is used in Title 12, Section 123, supra. — **Underwood Typewriter Company v. Marengo County Bank,** 203 Ala. 128, 82 So. 158; Biennial Report of Attorney General 1936-38, page 13; Biennial Report of Attorney General 1928-30, page 222.

I am of the opinion that your third inquiry should be answered in the affirmative. This office has heretofore held that it is mandatory that the county governing body furnish the county superintendent of education a telephone under Title 52, Section 130, Code of Alabama 1940, Recompiled 1958. A telephone comes within the term of "office equipment," as used in said section. — Biennial Report of Attorney General 1926-28, page 567; Biennial Report of Attorney General 1928-30, page 151; Biennial Report of Attorney General 1930-32, page 68; Quarterly Report of Attorney General, Volume 56, page 58.

Yours very truly,

RICHMOND M. FLOWERS
Attorney General

September 22, 1965

Honorable Alton L. Turner
Attorney for City of Luverne
Luverne, Alabama

Municipalities — Public Service Commission

1. The City of Luverne, Ala. must comply with the provisions of Title 37, Secs. 376-386, Code of Alabama 1940, as Recompiled 1958, should it wish to sell all or part of its municipal electric distribution system.

2. The Town of Rutledge, Ala. must comply with the provisions of Title 48, Secs. 342-347, Code of Alabama 1940, as Recompiled 1958, should it wish to engage in the business of operating an electric light plant or distribution system.

Opinion by Assistant Attorney General Bradley.

Dear Sir:

Your request for an official opinion bearing date of September 13, 1965, is as follows:

"As attorney for the City of Luverne, Alabama, I herewith transmit to you a resolution adopted by the Mayor and Council of the City of Luverne pursuant to Title 55, Section 242, Code of Alabama and respectfully request on behalf of the City of Luverne your opinion on the question set forth in said resolution.

"The City will appreciate your expediting this request as much as possible.

"1. Would the sale by the City of Luverne, Alabama, to the Town of Rutledge, Alabama, of that portion of the electric distribution system owned by the City of Luverne, Alabama, located within and near the corporate limits of the Town of Rutledge, Alabama, be subject to the provisions of Section 376-386, Title 37, Code of Alabama 1940?

"2. With the City of Luverne, Alabama, and the Town of Rutledge Alabama, in agreement upon the terms and conditions of a sale by the City of Luverne, Alabama, to the Town of Rutledge, Alabama, of that portion of the electric distribution system owned by the City of Luverne, Alabama, located within and near the corporate limits of the Town of Rutledge, Alabama, would it be necessary that the provisions of Section 342-347, Title 48, Code of Alabama, especially those provisions requiring approval by the Alabama Public Service Commission, be complied with?"

The answer to your first question is in the affirmative.

Title 37, Section 377, Code of Alabama 1940, as Recompiled 1958, provides that any municipality desiring to sell an electric light plant or part thereof must pass a resolution declaring it to be the judgment of the governing body of said municipality that a sale of the plant or part thereof is in the best interests of the municipality.

Title 37, Section 378, Code, supra, provides that upon passage of

said resolution the governing body of the municipality shall call a special election for the purpose of allowing the citizens of said municipality to decide if they want the electric plant or part thereof to be sold.

Sections 379-386 of Title 37, supra, merely outline the procedure for carrying out the election and disposing of the property.

Your question numbered two is answered in the affirmative.

Title 48, Section 342, Code, supra, provides that any municipal corporation desiring to engage in the business of operating an electric light plant and distribution system shall, before doing so, notify the owner of an existing electric generating or distribution system operating in the territory in which it intends to furnish such service of its intention to so engage and its willingness to buy the system or part thereof.

Section 343 of Title 48, Code, supra, provides that, if the owner and prospective purchaser agree on terms and conditions of purchase, the Public Service Commission must then approve said proposed agreement.

Then, the matter of the proposal must be heard by the Commission, and if approved, announce said approval by appropriate order. Thereupon, the municipality proposing to furnish the electric service shall undertake to consummate the purchase of the desired facility.

As you stated in your request for an opinion, the City of Luverne and the Town of Rutledge have agreed on terms and conditions of the sale and purchase; hence, all that remains to be done is to obtain the Commission's approval of the proposal and ask the Commission to set the matter for hearing.

The Town of Rutledge should ask the Public Service Commission to hear and approve the sale, and the City of Luverne should present the matter of the proposed sale to the electorate of said City.

Yours very truly,

RICHMOND M. FLOWERS
Attorney General

September 23, 1965

Honorable Noble J. Russell
Counsel, Board of Revenue and
Control of Morgan County
Decatur, Alabama

Taxation — Exemptions — Counties

The exemption from ad valorem tax for qualified new plants, industries, or factories incorporated under the laws of the State of Alabama authorized by the provisions of Title 51, section 3, as amended, Code of Alabama 1940, recompiled 1958, may be granted for a period of not exceeding ten years from the date of such incorporation or from the date of completion of such plants, industries, or factories.

Opinion by Assistant Attorney General Livingston

Dear Mr. Russell:

Your request for an official opinion dated September 17, 1965, is as follows:

"As attorney for the Board of Revenue and Control of Morgan County, Alabama, I have been directed to request your opinion with reference to a certain application which has been filed with the Board by Metco, Inc., a corporation, for certain tax exemptions allowed under Title 51, Sec. 3, et seq, Code of Alabama 1940, as amended. A copy of the request for exemption is enclosed for your perusal.

"It will be noted that the petition states in paragraph 3 that the new plant facilities will be completed in December, 1965. In view of this, your opinion is respectfully requested as follows:

"1. Due to the fact that the work will not be completed on or before September 30, 1965, can the Board at this time grant the exemption requested for the tax year 1966?

"2. If your answer to question No. 1 is in the negative, please advise whether or not the Company will have to file a new application after October 1, 1965, or can it amend the application which it has already filed.

"The Board of Revenue and Control holds its last meeting before the beginning of the new tax year (October 1st) on September 27th,

therefore, I would appreciate it very much if you could give the Board an answer by that date."

The application for exemption filed by Metco, Inc., with the Board of Revenue and Control of Morgan County states that the petitioner was incorporated on January 11, 1965, and has operated a pilot plant within the plant facilities of Baker Manufacturing Company, Inc., its parent company, at Hartselle, Alabama, in the fabrication and manufacture of steel reels used in the distribution of wire, steel and aluminum cable. Petitioner is now preparing to build a manufacturing plant on newly acquired real estate in Hartselle and it is estimated that the new plant facilities will be completed in December, 1965.

The corporation being incorporated on January 11, 1965, no lien for ad valorem tax has yet attached to any property of the corporation.

Title 51, section 3, as amended, Code of Alabama 1940, recompiled 1958, provides, in part, as follows:

". . . the court of county commissioners or other court or board having like jurisdiction of any county, and the constituted authorities of any city or town in which it is proposed to locate, or add to, or to extend any such factories or plants, are authorized and empowered to remit the taxes assessed for all county and municipal purposes, except for any schools and school district purposes, on such plants, industries or factories and on all extensions or additions to such plants, industries or factories as are already built and operating, and on all plants, works, machinery and other equipment of such plants, industries or factories, or additions thereto, or extensions thereof, and also on all of the capital stock of such plants, industries and factories, or increase of such capital stock made for the purpose of making the additions thereto or extensions thereof, for a period of not exceeding ten years **from the date of the incorporation or organization of such plants, industries or factories, if incorporated and organized under the laws of the State of Alabama,** or for a period not exceeding ten years from the date of being granted permission to do business in the state of Alabama, if a foreign corporation, or **from the date of completion of such plant, industry or factory,** or from the date of the completion of such addition or extension thereof . . ." (Emphasis added)

In view of the above provisions of section 3, supra, it appears that the exemption may be granted for a period of not exceeding ten years from the date of incorporation, January 11, 1965, or from the date of completion of the plant in December, 1965. Which date to use is apparently within the discretion of the Board of Revenue and Control. If the exemption is for ten years from the date of incorporation it should be granted prior to October 1, 1965, and the first tax year affected would be 1966 (October 1, 1965 through September 30, 1966) and the

exemption would terminate September 30, 1975. If the exemption is for ten years from the date of completion of the plant, the first tax year affected would be 1967 (October 1, 1966 through September 30, 1967) and the exemption would terminate September 30, 1976.

Therefore, my answers to your questions are as follows:

1. Yes.

2. However, if the exemption is to be effective from the date of the completion of the plant, that is, effective October 1, 1966, it is my opinion that the present application is sufficient and the corporation need not amend the one already filed nor file a new one.

Yours very truly,

RICHMOND M. FLOWERS
Attorney General

INDEX

QUARTERLY REPORT OF THE ATTORNEY GENERAL FOR THE THE PERIOD FROM JULY 1, 1965 THROUGH SEPTEMBER 30, 1965

— A —

Page

ACTS:

GENERAL AND LOCAL ACTS 1965:
Act No. 120 (Flat Expense allowance of Clarke County Commissioners 20

— C —

CODE OF ALABAMA 1940, RECOMPILED 1958:

Title 12
Sections 12(15) and 13 (Furnishing telephones to county officials) 24

Title 34
Section 18 (Celebrating rites of matrimony) 9

Title 37
Sections 376 - 386 (Municipal electric distribution systems) 27

Title 47
Sections 342 - 347 (Municipal electric distribution systems) 27

Title 51
Section 3, et seq. (County tax exemption for new industry 30

Title 51
Section 606 (Trading stamps) 14
Section 703 (House trailers) 11

CONSTITUTIONALITY:

Flat maximum expense allowance for members of Commissioners Court — constitutionality and payment 20

Page

COSTS AND FEES:

Celebrating rites of matrimony by Judge of Probate — proper fee chargeable and disposition thereof 9

Registers — proper commission on partition sales of equity involved 17

COUNTIES:

Counties — length of exemption from ad valorem tax for qualified new plants, industries or factories 30

Flat maximum expense allowance for members of Commissioners Court — constitutionality and payment 20

Telephones and typewriters — furnishing same to certain county officials 24

— E —

EXEMPTIONS:

Counties — length of exemption from ad valorem tax for qualified new plants, industries or factories 30

EXPENSES:

Flat maximum expense allowance for members of Commissioners Court — constitutionality and payment 20

— F —

FILING TAX:

Assignment of rentals under leases to third party — no tax due 7

— H —

HOUSE TRAILERS:

Camp trailers, which are collapsible, are not "house trailers" subject to license tax 11

— J —

JUDGES OF PROBATE:

Celebrating rites of matrimony — proper fee chargeable and disposition thereof 9

Page

— L —

LEASES:

Assignment of rentals under leases to third party — no filing tax due 7

LICENSES:

Camp trailers, which are collapsible, are not "house trailers" subject to license tax 11

Trading stamps — company selling to merchants maintaining redemption centers 14

— M —

MARRIAGE:

Celebrating rites of matrimony by Judge of Probate — proper fee chargeable and disposition thereof 9

MUNICIPALITIES:

Procedure for selling or operating municipal electric distribution system 27

— O —

OFFICERS AND OFFICES:

Telephones and typewriters — furnishing same to certain county officials 24

OPINIONS OVERRULED, MODIFIED OR DISTINGUISHED:

Biennial Report of Attorney General 1930-32, page 878 (Commission of registers in partition proceedings) 17

— P —

PUBLIC UTILITIES:

Municipalities — procedure for selling or operating its electric distribution system 27

Page

— I —

REGISTERS:

Proper commission on partition sales of equity involved 17

— T —

TAXATION:

Assignment of rentals under leases to third party — no filing tax due 7

Camp trailers, which are collapsible, are not "house trailers" subject to license tax 11

Counties — length of exemption from ad valorem tax for qualified new plants, industries or factories 30

Trading stamps — company selling to merchants maintaining redemption centers 14

TELEPHONES:

Counties — furnishing same to certain county officials 24

TRADING STAMPS:

Company selling to merchants maintaining redemption centers — liability for license 14

— W —

WORDS AND PHRASES:

Camp trailers, which are collapsible, are not "house trailers" subject to license tax 11

INFORMAL OPINIONS

During the period covered by this Quarterly Report of the Attorney General, July 1, 1965 through September 30, 1965, the Attorney General rendered the following informal opinions. These informal opinions are not published in the Quarterly Report.

Subject Matter	Addressee	Date	File No.
BANKS AND BANKING			
Foreign Corporations — Licenses and Taxes	E. D. Murphy	Jul. 13	739
Securities — Municipalities	Robt. M. Cleckler	Jul. 20	Dept. Banking
Worthless Checks — Charges	Rosa H. Sellers	Sept. 30	1003
COSTS AND FEES			
Dallas County — Clerks and Solicitors	Hugh Mallory, Jr. & Margarite H. Houston	Sept. 2	943
Documentary Tax — Refund	David M. Nettles	Jul. 29	660
Filing Tax — Trust Agreement	J. Paul Meeks	Aug. 4	158
Filing Tax — Quick Claim Deed	J. Paul Meeks	Sept. 21	158
Geneva County — Traffic Fines	W. H. Draughn	Sept. 13	981
Justice of Peace — Traffic Violations	J. L. Weatherwax	Sept. 20	958
COUNTIES			
Bids — Investments	Lawrence W. Martin	Aug. 12	859
Board Chairman — Expenses	Homer McLemore	Sept. 9	520
Claims — Sales	J. P. King	Jul. 14	793
Commissioners — Expenses	Conrad M. Fowler	Aug. 23	906
Convicts — Pardon & Parole	Kenneth Tucker	Aug. 3	830

Subject Matter	Addressee	Date	File No.
Courthouse — Memorial Plaque	Roger H. Bedford	Sept. 23	974
Employees — Leave	W. Cooper Green	Jul. 16	797
Geneva County — Fines and Forfeitures	W. H. Draughn	Sept. 13	981
Industrial Development — Appropriations	Calvin L. Vest	Jul. 22	601
Industrial Development — Corporations	J. Gilmer Blackburn & Guy D. Roberts	Aug. 9	870
Judges — Telephones	David C. Akins	Aug. 10	857
Parks — State and State Departments	Claude D. Kelley	Aug. 3	Dept. Conserv.
Sheriffs — Expenses	Mrs. Francis Cook	Aug. 20	802
Subdivisions — Health and Health Departments	Alfred W. Goldwaithe	Aug. 30	900
Taxation — Schools	Bill Nichols	Jul. 14	788
CRIMINAL LAW			
Civil Rights — Demonstrations	C. M. Keever	Aug. 5	863
Extradition — Procedure	Forest H. Anderson	Jul. 30	Atty. Gen. File
Gaming — Coin Machines	Fred Lange, Jr.	Aug. 2	839
Gaming — Lot Purchase Plan	M. G. Temme	Jul. 7	773
Justice of Peace — Disorderly Conduct	Perry G. McClellan	Jul. 7	772
Justices of Peace — Warrants	Harry L. Parker	Jul. 19	248
Motor Vehicles — Drivers License	T. J. Carnes	Aug. 25	333
Parents — Delinquency	Pat Herman	Aug. 10	862
Prisoners — Security	Harold Roland Shapiro	Jul. 26	811
Trial — Publicity	Alfred Friendly	Jul. 28	815
Water Pollution — Proceedings	Benj. H. Kilborn	Sept. 2	922
Wine — Manufacture	Chas. H. Robinson	Sept. 1	916

Subject Matter	Addressee	Date	File No.
ELECTIONS			
Board of Registrars — Federal Voting Rights	Marion N. Lloyd	Aug. 16	844
(Same)	A. L. Wall	Aug. 16	845
Constitutional Amendment — Expenses	John Graves	Sept. 22	St. Compt.
Constitutional Amendment — Municipal Tax	L. S. Limbaugh	Sept. 23	973
Disqualification — Conviction	Willie Conway	Aug. 3	835
Poll Tax — Registration	Huton, Williams, Gay, Powell & Gibson	Aug. 23	910
Registration — Literacy	Emmett W. Brown	Jul. 26	824
EMPLOYERS AND EMPLOYEES			
Garnishment — Discharge	L. E. Shaw	Jul. 16	796
Military Leave — Payment	Lurline Cook	Jul. 19	803
Retirement — Accrued Leave	Pierre Pelham	Aug. 11	854
(Same)	Sybil Pool & Ed Pepper	Aug. 13	Ala. Liq. Pet. & Gas Bd.
Social Security — County Board of Equalization	Edith P. Bailey	Sept. 1	917
INSURANCE			
Deposits — Release	Mary T. Garner	Aug. 3 & Aug. 27	St. Treas.
Municipalities — Officials	J. Gorman Houston, Jr.	Jul. 8	662
Tax — Nonresident	Walter S. Houseal	Jul. 28	Ins. Dept.

Subject Matter	Addressee	Date	File No.
MUNICIPALITIES			
Annexation — Elections	L. H. Gunter	Aug. 4	587
Annexation — Procedure	M. O. Burrell	Aug. 4	832
Commissioner — Subcontractor	Arnold Teks	Aug. 10	867
Expenditures — Approval	B. N. Brown	Sept. 7	918
Government Change — Interim Officers	M. H. Lanier	Jul. 23	816
House Moving — Streets	C. B. Williams	Jul. 22	820
Industrial Development — Corporations	J. Gilmer Blackburn & Guy D. Roberts	Aug. 9	870
Officers — Corporations	Josh Mullins, Jr.	Jul. 7	530
Water System — Out-Of-State	W. S. Turner	Aug. 4	833
OFFICERS AND OFFICES			
Constables — Appointment	Frank W. Babacy	Aug. 11	866
Constables — Firearms	Hubert Wilson	Aug. 12	856
Coroners — Records	Earl B. Wert	Jul. 2	774
Corporations — Seal	J. F. Timmes	Sept. 24	971
County Boards of Equalization — Social Security	Edith P. Bailey	Sept. 1	917
County Solicitors — Compensation	W. W. Weatherford	Sept. 27	506
Deceased — Accrued Leave	W. Cooper Green	Jul. 16	797
Franklin County — County Solicitors	W. W. Weatherford	Sept. 27	506
Franklin County — Court Reporters	W. W. Weatherford	Sept. 27	506
Geneva County Court — Officers	Carl E. Sellers	Aug. 10	878
Judge of Probate — Office Hours	T. C. Almon	Sept. 13	491
Justices of Peace — Bonds	A. Drew Redden	Sept. 21	954
Morgan County Commissioner of Licenses — Authority	Cleon Yates	Sept. 23	969

Subject Matter	Addressee	Date	File No.
Municipalities — Medical Clinic	C. E. Buffalow	Aug. 16	881
School Trustees — Elected Office	Virgil Nolen Price	Sept. 1	533
Tax Assessor — Bonds	David W. Pruett	Sept. 15	145
Tax Assessor — Municipalities	Earl D. James	Aug. 6	122
SCHOOLS			
Athletic Equipment — Lunches	John R. Hargis	Jul. 19	224
Attendance — Special I. Q. Students	Osbie J. Linville	Sept. 13	980
Building Program — Recommendation and Acceptance	O. J. McGriff	Jul. 1	768
Certifying Ages — Fees	J. H. Curry	Sept. 21	415
City and County Boards — Water	Fred D. Ramsey	Aug. 11	852
City Boards of Education — Attorneys	Will Ivy Andrews	Aug. 10	876
City Construction — Bids	Carl E. Maye	Jul. 12	26
City Property — Title	Fred Hubbard	Jul. 13 & Jul. 19	804
Deeds — Execution	Austin R. Meadows	Sept. 7	Dept. Ed.
Injured Students — Liability	Robert G. Brown	Aug. 6	864
Minimum Age — Birthday	Mrs. E. R. McCulley	Jul. 22	810
National Defense Educational Act — Dependents	Sadie G. Moore	Jul. 7	770
(Same)	James J. Jackson	Jul. 7	771
Veterinarians — Practice	Dr. Ray W. Ashwander	Sept. 16	956

Subject Matter	Addressee	Date	File No.
STATE AND STATE DEPARTMENTS			
Advisory Committee for Economic Opportunity Funds	Sargent Shriver	Jul. 26	865
Civil Defense — Attorneys	J. Frank Manderson	Sept. 22	Dept. Civil Defense
Engineers — Words and Phrases	C. W. Harrison	Sept. 7	Dept. Bd. of Eng.
(Same)	Maurice A. Downing	Sept. 17	957
(Same)	Maurice A. Downing	Sept. 29	957
Highway Patrol — Convention Expenses	Ralph P. Eagerton	Jul. 23	Dept. Ex. of Accts.
Navigable Waters — Ownership	Alfred A. Porro	Aug. 28	889
Post Office — Jurisdiction	W. F. Walsh	Aug. 17	892
Printing — Contracts	Alvis Howard, Jr.	Jul. 19	809
Public Service Commission—Majority	Ed Pepper	Jul. 9	Pub. Serv. Comm.
State Docks — Burglary	Houston Feaster	Aug. 10	Dept. St. Docks